



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: EA/03928/2016

THE IMMIGRATION ACTS

Heard at Field House

On 9th March 2018

Decision & Reasons

Promulgated

On 27th March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR MD BADRUL MUSTAK
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Z McCallum (Counsel), Londonium Solicitors

For the Respondent: Mr S Walker (Senior HOPO)

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh, a male, and was born on 10th September 1986. He appealed against the decision of the Respondent Secretary of State dated 21st March 2016, refusing his application for a residence card as confirmation of a right of residence, on account of being a family member of an EEA national, who is a qualified person. The application was considered in accordance with Regulation 8(2) of the Immigration (EEA) Regulations 2006. It was considered that the Appellant had made a claim as an extended family member, but that following the decision in **Sala (EFMs: Right of Appeal) [2016] UKUT 00411**, where

it was found that there is no statutory right of appeal against the decision of the Secretary of State, not to grant a residence card, to a person claiming to be an extended family member, the Appellant had no right of appeal, and the appeal was accordingly dismissed for want of jurisdiction (see paragraph 7 of the determination by Judge Malcolm).

2. The Appellant sought permission to appeal, which was granted by the First-tier Tribunal on 5th January 2018, on the basis that the decision in **Banger (Unmarried Partner of British National) [2017] UKUT 125**, now suggested that the decision in **Sala** was unsustainable.

The Hearing

3. At the error of law hearing before me, both parties agreed that the matter fell to be decided on the basis that **Sala** was incorrectly decided. Both parties agreed that in the light of the decision in **Khan v SSHD [2017] EWCA Civ 1755**, the First-tier Tribunal was wrong in law to conclude that it did not have jurisdiction to hear the appeal with the result that the decision be set aside. I agreed. As the evidence is to be led it is appropriate that it be reheard in the First-tier.

Notice of Decision

4. The decision of the First-tier Tribunal involved the making of an error on a point of law. It is set aside and in terms of Section 12(2)(b)(i) of Tribunals, Courts and Enforcement Act 2007 and of practice statement 7.2, remitted to the First-tier Tribunal for a fresh hearing before a judge other than FTTJ Malcolm.
5. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

24th March 2018